



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPU

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the executor of the landlord's estate, LM ("landlord"), and counsel, KB, attended the hearing by way of conference call, the tenants did not. LM and KB were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed that LM, KB, and I were the only ones who had called into this teleconference.

KB confirmed that the tenants were both served with the landlord's application for dispute resolution hearing package on July 12, 2019 by way of registered mail. The tracking numbers were provided as part of the landlord's evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were both deemed served with the landlord's application and evidence package on July 17, 2019, five days after its registered mailing.

LM confirmed that the tenants had both moved out on July 27, 2019, and that the landlord no longer requires an Order of Possession. Accordingly, this portion of the landlord's application was cancelled.

Although the landlord had originally applied for a monetary Order of \$1,720.00 in their initial claim, the landlord clarified in the hearing that monthly rent was set at \$550.00 per month, and not \$350.00 per tenant. I have accepted the landlord's request to amend their original application from \$1,720.00 to \$2,320.00 to reflect the correct monthly rent due from each tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

This month-to-month tenancy began on March 1, 2019. Both tenants resided in the basement of the home, with monthly rent set at \$550.00 for each tenant, payable on the first of the month. Both tenants were responsible for paying \$80.00 per month for utilities. Both parties had entered into this agreement orally. The landlord had collected a security deposit of \$275.00 from each tenant, and still holds this deposit. The tenants moved out on July 27, 2019.

The landlord is seeking a monetary order for unpaid rent and utilities, plus recovery of the filing fee. Both tenants had only paid \$100.00 in rent for June 2019, and owe the following in rent and utilities:

Item	Amount
Rent for June 2019 x 2 tenants	\$900.00
Rent for July 2019 x 2 tenants	1,100.00
Outstanding Utilities for June and July 2019 x 2 tenants	320.00
Total Monetary Order Requested	\$2,320.00

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The landlord provided undisputed evidence that the tenants failed to pay the outstanding rent in the amount of \$900.00 for June 2019, and \$1,100.00 for July 2019, as well as the utilities for June and July 2019. Therefore, I find that the landlord is entitled to \$2,320.00 in outstanding rent and utilities for this tenancy.

The landlord continues to hold the tenants' security deposit of \$275.00 for each tenant. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposits in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

As the tenants had moved out on July 27, 2019, the landlord's application for an Order of Possession was cancelled.

I issue a \$1,870.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent and utilities, the filing fee for this application, and also allows the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Item	Amount
Rent for June 2019 x 2 tenants	\$900.00
Rent for July 2019 x 2 tenants	1,100.00
Outstanding Utilities for June and July 2019 x 2 tenants	320.00
Filing Fee	100.00
Less Security Deposit Held	-550.00
Total Monetary Order	\$1,870.00

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 3, 2019

Residential Tenancy Branch